

Service Date: June 25, 1990

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER of the Application)	TRANSPORTATION DIVISION
of Burlington Northern Railroad)	
Company to Discontinue its Agency)	DOCKET NO. T-9466
Operations and Dispose of the)	
Depot at Lewistown, Montana.)	ORDER NO. 5996

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FINAL ORDER

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APPEARANCES

FOR THE APPLICANT:

Charles C. Dearden, Attorney at Law, Burlington Northern Railroad Company, Murphy, Robinson, Heckathorn and Phillips, P.C., One Main Building, Kalispell, Montana 59903-0759

FOR THE COMMISSION:

Robin A. McHugh, Commission Attorney, 2701 Prospect Avenue, Helena, Montana 59620-2601

Wayne Budt, Transportation Division, 2701 Prospect Avenue, Helena, Montana 59620-2601

BEFORE:

CLYDE JARVIS, Chairman and Hearing Examiner

BACKGROUND

On October 18, 1989 Burlington Northern Railroad Company (BN) filed a petition with the Public Service Commission (Commission) for authority to discontinue its agency and dispose of the depot facility at Lewistown, Montana.

Following issuance of proper notice a public hearing was held on December 13, 1989 in the Civic Center, 309 5th Avenue South, Lewistown, Montana. The Commission received a written protest to the petition from K.L. Meyers, the agent at Lewistown. Mr. Meyers' letter was designated Commission Exhibit No. 1. At the conclusion of the hearing it was stipulated by all present that the Commission may issue a final order.

SUMMARY OF TESTIMONY

James D. Whittmyer, Charles Scheibe, Charles Keeler and William Albright, employees of BN, appeared in support of the petition and incorporated into the proceeding by reference their testimony in Docket No. T-9464. Mr. Albright sponsored BN proposed Exhibit A, a compilation of rail traffic statistics for the Lewistown agency similar to the statistics compiled for the Stanford agency in Docket No. T-9464. Each of the four BN witnesses gave a brief summary of their testimony in Docket No. T-9464 for the benefit of those members of the public who attended the Lewistown hearing. In addition, Mr. Keeler explained that for the present BN will retain the Lewistown depot for railroad use.

James T. Mular, legislative director for the Transportation and Communications International Union (TCU), appeared and testified in opposition to the petition. He asked that the testimony he gave in Docket No. T-9464 be incorporated into this proceeding. The request was granted. In addition, Mr. Mular stated that the elimination of the Lewistown agent would create a service void and would further isolate rural Montana from rail service.

Richard Van Aken, the relief agent in Lewistown at the time of the hearing, appeared and testified in opposition to the petition. Mr. Van Aken described the duties that he performs as a relief agent. He noted that neither the BN local phone number, nor a BN 800 number is in the Lewistown phone book.

Elily Zwolle, a resident of Lewistown appeared and testified in opposition to the petition. Mrs. Zwolle said that BN should be working to build the local area and should maintain a local agent because people rely on the railroad.

Gene Demars, a State Representative and farmer in the Stanford area appeared in opposition to the petition and requested that his testimony from Docket No. T-9464 (Stanford) be incorporated into this proceeding. The request was granted.

Lloyd Johnson, Mayor Lewistown, appeared and testified that he would like to see the agency remain open.

DISCUSSION

Commission authority to close a railroad agency is provided at 69-14-202, MCA, which reads as follows:

69-14-202. Duty to furnish shipping and passenger facilities. (1)

Every person, corporation, or association operating a railroad in the state on January 1, 1987, or a successor thereto, shall maintain and staff facilities for shipment and delivery of freight and shall ship and deliver freight and accommodate passengers in such facilities as were maintained and staffed on January 1, 1987.

(2) However, if a person, corporation, or association operating a railroad demonstrates to the public service commission, following an opportunity for a public hearing in the community where the facility is situated, that a facility is not required for public convenience and necessity, the commission shall authorize the closure, consolidation, or centralization of the facility. In determining public convenience and necessity, the commission shall, prior to making its decision, weigh and balance the facts and testimony presented at the hearing, including the facts and testimony presented by the general public, the existing burdens on the railroad, the burdens placed upon the shipping and general public if the application is granted, and any other factors the commission considers significant to provide adequate rail service.

The Commission interprets this section as requiring an analysis of the impacts of a proposed closure on shippers and the general public.

There is no testimony from shippers on the record in this proceeding. BN indicated that it has received no complaints from shippers over this petition and further indicated that closing the Lewistown agency will not affect service to shippers.

With respect to an analysis of the impacts of a proposed closure on members of the general public the Commission has written:

For the Commission to deny an application of this kind, primarily on the basis of impact on persons other than shippers, it needs to be convinced either 1) that, in the absence of an agent, the community will experience serious safety problems as a result of railroad operations, or 2) will experience other significant problems related to railroad operations that an agent is uniquely able to prevent or solve.

In the Matter of the Application of Burlington Northern Railroad Company to discontinue its Agency and Dispose of the Depot Facility at Hysham, Montana, Order No. 5866, p. 15. No testimony on safety concerns was presented at the hearing. There was some testimony indicating a preference that the agency be maintained, but nothing on this record can support a conclusion that significant problems related to railroad operations will occur in the absence of a Lewistown agent.

CONCLUSIONS OF LAW

The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Montana Code Annotated, Title 69, Chapter 14.

The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter pursuant to Montana Code Annotated Title 2, Chapter 4.

No set rule can be used to determine whether or not the public convenience and necessity require a given service to be performed. The facts in each case must be separately considered and from those facts the question is to be determined. See Chicago, M. St. P. and P.R.G. v. Board of Railroad Commissioners, 126 Mont. 568, 225 P.2d 346 (1953), cert. denied 346 U.S. 823.

Public Convenience and Necessity does not require the maintenance of the agency at Lewistown, Montana.

The Commission concludes that BN may remove the Lewistown depot. Prior to its disposal, BN should determine whether the building is of historical significance and preserve it if

it is historically significant or allow local governments in the area the opportunity to utilize the building. The Commission directs BN to inform the Commission in writing of the disposition of the building.

ORDER

NOW THEREFORE IT IS ORDERED that BN's petition to discontinue its agency and dispose of the depot facility at Lewistown, Montana is Granted.

IT IS FURTHER ORDERED that BN's objections to the admission of evidence and testimony are Denied and all proposed exhibits are made part of the record and have been given the weight they deserve in Commission deliberations.

IT IS FURTHER ORDERED that if the proper 800 number for accessing BN customer service is not currently in the Lewistown phone directory, BN must list that number at the next opportunity.

IT IS FURTHER ORDERED that this Order be effective immediately and that a full, true and correct copy of this Order be mailed forthwith to the Applicant and all parties of record.

Done and Dated this 25th day of June, 1990 by a vote of 5-0

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

CLYDE JARVIS, Chairman

HOWARD L. ELLIS, Vice Chairman

JOHN B. DRISCOLL, Commissioner

WALLACE W. "WALLY" MERCER, Commissioner

DANNY OBERG, Commissioner

ATTEST:

Ann Peck
Commission Secretary

(SEAL)

NOTE: Any interested party may request that the Commission reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.